

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT HORN and MARIAN HORN,)
)
Plaintiffs,)
)
v.) No. 4:08CV1033 TIA
)
)
ST. LOUIS COUNTY, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs' Motion to Sever Case of Robert Horn from the Case of Marion Horn and Extend Time (Docket No. 87). All matters are pending before the undersigned United States Magistrate Judge, with consent of the parties, pursuant to 28 U.S.C. § 636(c).

On July 15, 2008, Plaintiffs Robert Horn and Marian Horn filed a forty-six page Complaint and Petition alleging violation of constitutional rights (Counts I and III), violation of statutory civil rights (Count II), conspiracy to violate civil rights (Count IV), assault and battery (Counts V and VI), intentional infliction of emotional distress (Counts VII and VIII), respondent liability (Counts IX and X), negligence (Counts XI through XV), and malicious abuse of process, false arrest, and false imprisonment (Counts XVI) set forth in Plaintiffs' Causes of Action I, II, and III (Docket No. 1). In Cause of Action IV, Plaintiffs set forth a defamation claim (Docket No. 1).

On November 10, 2008, Plaintiffs filed a forty-seven page Amended Complaint and

Petition alleging violation of constitutional rights (Counts I and III), violation of statutory civil rights (Count II), conspiracy to violate civil rights (Count IV), assault and battery (Counts V and VI), intentional infliction of emotional distress (Counts VII and VIII), respondent superior liability (Counts IX and X), negligence (Counts XI through XV), and malicious abuse of process, false arrest, and false imprisonment (Counts XVI) set forth in Plaintiffs' Causes of Action I, II, and II. (Docket No. 3). In Cause of Action IV, Plaintiffs set forth a defamation claim (Docket No. 3).

On July 6, 2009, Plaintiffs filed a Second Amended Complaint (Docket Nos. 54, 55, and 56) and Defendants filed a Motion to Dismiss Second Amended Complaint for Failure to State a Claim (Docket No. 58). After granting leave to file, Plaintiffs filed a Third Amended Complaint on December 17, 2009 (Docket No. 73). Defendants filed a Motion to Dismiss Case for Failure to State a Claim (Docket No. 79).

The Defendants are St. Louis County, St. Louis County Police Department, County Executive Charles Dooley, Council Members Hazel Erby, Kathleen Kelly-Barkett, Colleen Wasinger, Mike O'Mara, Barbara Frazier, John Campisi, and Greg Quinn, County Counselor Pat Reddington, and Chief of Police Jerry Lee, sued in their official capacity, and individual police officers and supervisors William Ostendorf, Robert Shelly, Joshua Lawrence, Joseph Brandt, Jason Neuman, Haefele, Colin Foppe, Christopher Most, Jeffry Hoots, Timothy Harrison, Charlie Rodriguez, Eric Austermann, and Kenneth Cox, sued in both their individual and official capacities.

In the various complaints, Plaintiffs allege as follows: On September 9, 2005, Defendant Officers entered Plaintiffs' home and arrested Robert Horn and seized firearms from his house. Thereafter, Defendants falsely charged Robert Horn for disturbing the peace, resisting arrest,

assaulting of an officer, and interfering with a police officer resulting in Robert Horn being incarcerated in the St. Louis County jail. On July 15, 2006, Plaintiffs allege that named Defendants entered their home, arrested Robert Horn using unjustified force, and seized firearms from their house. Thereafter, Defendants falsely charged Robert Horn with peace disturbance and resisting arrest, resulting in Robert Horn being incarcerated in the St. Louis County jail. After refusing Defendants' permission to enter her house on July 15, 2006, Defendants placed Marian Horn in a hot police car with the windows rolled up and falsely imprisoned her for over fifteen minutes until she gave permission to Defendants to enter her house. Thereafter, Defendants falsely charged Marian Horn with interfering with a police officer. Lastly, Robert Horn alleges slander by Defendants designating him as a "hazard," a police designation reserved for someone dangerous or mentally ill.

Plaintiffs have asked the undersigned to sever Robert Horn's claims from Marion Horn's claims. Although Defendants have indicated they are not opposed to such action, in the interest of justice and judicial economy, the Court declines to do so. Instead, the Court directs Plaintiffs to either dismiss without prejudice Plaintiff Robert Horn from the instant action or request a stay of the case pending final disposition of the criminal misdemeanor charges by the St. Louis County Circuit Court.

IT IS HEREBY ORDERED that Plaintiffs' Motion to Sever Case of Robert Horn from the Case of Marion Horn and Extend Time (Docket No. 87) is **GRANTED IN PART and DENIED IN PART.**

IT IS FURTHER ORDERED that the parties shall submit a joint proposed Amended Case Management Order and a Status Report relating to the pending State court action no later

than April 1, 2010.

IT IS FURTHER ORDERED that Plaintiffs shall file a pleading setting forth the caption and the cause number of the pending State court action and a Status Report of the case no later than February 12, 2010.

Dated this 5th day of February, 2010.

/s/Terry I. Adelman
UNITED STATES MAGISTRATE JUDGE